

1
2
3
4
5
6 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
7 STATE OF MONTANA

8 IN THE MATTER OF THE PROPOSED
9 DISCIPLINARY TREATMENT OF
10 PREFERRED PROFESSIONAL
INSURANCE COMPANY,
Respondent.

Case No. INS-2005-9

CONSENT AGREEMENT
AND FINAL ORDER

11
12 The State Auditor and Commissioner of Insurance of the state of Montana
13 (Commissioner) and the Montana Insurance Department (Department), pursuant to the authority
14 of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby make the following
15 fact assertions and conclusions of law which justify and support disciplinary treatment:

16 **FACT ASSERTIONS**

17 1. Respondent Preferred Professional Insurance Company (hereafter PPIC) holds
18 certificate of authority #18853967, issued by the State Auditor and Commissioner of Insurance,
19 to transact property and casualty insurance in Montana. PPIC was issued this certificate of
20 authority, thereby becoming an authorized insurer, on January 10, 2003.

21 2. Authorized insurers are subject to comprehensive regulation by the Commissioner
22 under the Montana Insurance Code, Title 33, Mont. Code Ann., including, but not limited to,
23 prior approval of insurance contract forms and the rates charged for the same.

24 3. Prior to receiving certificate of authority #18853967, PPIC was an eligible surplus
25 lines insurer in Montana. Eligible surplus lines insurers are unauthorized insurers, in that they do
26 not hold a certificate of authority, but have been approved by the Commissioner to transact
27 insurance in Montana in certain limited circumstances, specifically when a line of insurance
28

1 coverage is not available in the admitted market from an authorized insurer, and are not subject
2 to the same regulatory oversight as authorized insurers.

3 4. After receiving a certificate of authority and becoming an authorized insurer,
4 PPIC continued to issue surplus lines insurance policies for Montana risks.

5 CONCLUSIONS OF LAW

6 1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to
7 Mont. Code Ann. § 2-15-1903.

8 2. The Insurance Department (Department) is under the control and supervision of
9 the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

10 3. The Commissioner shall administer the Department to protect insurance
11 consumers. Mont. Code Ann. § 33-1-311.

12 4. A person or entity "may not transact a business of insurance in Montana or a
13 business relative to a subject resident, located, or to be preformed in Montana without complying
14 with the applicable provisions of this code." Mont. Code Ann. § 33-1-102(1).

15 5. Pursuant to Mont. Code Ann. § 33-1-201(2), an "authorized insurer" is an insurer
16 "duly authorized by subsisting certificate of authority issued by the Commissioner to transact
17 insurance in this state."

18 6. Authorized insurers must file their insurance contract forms with the
19 Commissioner and Department and receive approval of the same prior to issuing them in
20 Montana. Mont. Code Ann. § 33-1-501. Authorized property and casualty insurers are also
21 subject to rate approval by the Commissioner and Department. Mont. Code Ann. §33-16-203.

22 7. Pursuant to Mont. Code Ann. § 33-1-201(10), an "unauthorized insurer" is an
23 insurer "not authorized by subsisting certificate of authority issued by the Commissioner to
24 transact insurance in this state."

25 8. An unauthorized insurer may be designated as an eligible surplus lines insurer by
26 the Commissioner and thereby may transact surplus lines insurance in Montana under certain,
27 limited circumstances. Mont. Code Ann. §§ 33-2-301, 33-2-302, 33-2-306, and 33-2-307.

1 Surplus lines insurance is a line of insurance coverage that is not available in the admitted market
2 from an authorized insurer. Mont. Code Ann. §§ 33-2-301 and 33-2-302.

3 9. Authorized insurers are not eligible to transact surplus lines insurance. Mont.
4 Code Ann. § 33-2-101, 33-2-301, 33-2-301, 33-2-306, and 33-2-307.

5 10. By issuing surplus lines insurance policies after receiving a certificate of
6 authority, and thereby becoming an authorized insurer, PPIC is in violation of Mont. Code Ann.
7 33-1-102(1) and 33-2-307.

8 11. By issuing unapproved insurance policies after receiving a certificate of authority,
9 PPIC is in violation of Mont. Code Ann. § 33-1-501. By failing to obtain approval of its rates for
10 insurance policies issued after receiving a certificate of authority, PPIC is in violation of Mont.
11 Code Ann. § 33-16-203.

12 12. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose an
13 administrative fine of up to \$25,000.00 per each violation.

14 AGREEMENT

15 The Department and Respondent PPIC hereby stipulate and agree to the following:

16 1. The Commissioner and Department have jurisdiction over the subject matter of
17 the above-entitled proceeding.

18 2. Respondent acknowledges that it was advised of the right to be represented by
19 legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

20 3. Respondent acknowledges that its authorized representative signing this Consent
21 Agreement and Final Order has read and understands each term of this Consent Agreement and
22 Final Order. Respondent acknowledges that it enters into this Consent Agreement voluntarily,
23 and without reservation. Respondent acknowledges that its authorized representative signing this
24 Consent Agreement is not under the influence of alcohol or drugs (prescription or otherwise) and
25 that he or she does not suffer from any emotional disturbance or mental disease or defect that
26 would render him or her not competent to sign this Consent Agreement. Respondent further
27 acknowledges that this Consent Agreement constitutes the entire agreement between the parties
28

1 and that no other promises or agreements, either express or implied, have been made by the
2 Department or by any member, officer, agent or representative of the Department to induce
3 Respondent to enter into this Consent Agreement.

4 4. The Department contends as set forth in the preceding Fact Assertions and
5 Conclusions of Law and Respondent neither admits nor denies the same. The Department and
6 Respondent have elected to resolve these matters as follows:

7 (a) As of August 4, 2004, Respondent PPIC has not issued any surplus lines
8 insurance policies in Montana;

9 (b) While Respondent PPIC holds a certificate of authority and thereby is an
10 authorized insurer, Respondent PPIC will not issue any surplus lines insurance policies in
11 Montana;

12 (c) For violations of the Montana Insurance Code, Mont. Code Ann. § 33-1-101,
13 *et seq.*, the Commissioner may impose a maximum fine of \$25,000.00 per each violation
14 pursuant to Mont. Code Ann. § 33-1-317. For all violations set out in this Agreement,
15 Respondent PPIC will pay an administrative fine of \$50,000.00 to the Department, with all but
16 \$5,000.00 suspended, to the Department within 30 days following the signing of the Final Order
17 in this matter. Respondent agrees to pay the remaining \$45,000.00 of the administrative fine if,
18 within the 12 months following the signing of the Final Order, Respondent fails to comply with
19 this Agreement and Final Order or fails to comply with the Montana Insurance Code or any
20 administrative rules promulgated thereunder. The failure of Respondent to comply during this
21 time period will be determined in a subsequent legal (administrative, civil and/or criminal)
22 proceeding by the Commissioner, Department, and/or State of Montana which need not be
23 concluded within 12 months following the signing of the Final Order in this matter. The
24 remaining \$45,000.00 of Respondent's administrative fine will be due within 30 days following
25 the determination of Respondent's failure to comply;

26 (d) The Department and Respondent agree that this Consent Agreement and
27 Final Order resolve the violations set out herein;

1 (e) Respondent specifically and affirmatively waives a contested case hearing
2 and all rights to appeal under the Montana Administrative Procedure Act, Mont. Code Ann. § 2-
3 4-101, *et seq.*, and elects to resolve this matter on the terms and conditions set forth herein;

4 (f) Respondent agrees that compliance with this Consent Agreement and Final
5 Order shall be a final compromise and settlement of the matters set forth herein;

6 (g) Respondent fully and forever releases and discharges the Commissioner,
7 Department, and all Department employees from any and all actions, claims, causes of action,
8 demands, or expenses for damages or injuries, whether asserted or unasserted, known or
9 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this
10 Consent Agreement; and

11 (h) The Department and Respondent agree that this Consent Agreement shall be
12 incorporated and made a part of the attached Final Order issued by the Commissioner herein.

13 5. Respondent further understands that, upon the signing of the Final Order by the
14 Commissioner or his representative, this Consent Agreement and Final Order will be an order of
15 the Commissioner and failure to comply with the same may constitute separate violations of the
16 Montana Insurance Code, pursuant to Mont. Code Ann. § 33-1-318 and/or other applicable
17 statutes or rules, and may result in subsequent legal action by the Department.

18 6. Respondent understands that this Consent Agreement is not effective until such
19 time as the following Final Order is signed.

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

7. Respondent understands that this Consent Agreement and Final Order are public records under Montana law and as such may not sealed or otherwise withheld from the public.

PREFERRED PROFESSIONAL INSURANCE COMPANY, RESPONDENT

By: Melvin I. Epstein
Printed Name: MELVIN I. EPSTEIN
Its: Sr. V.P.

7-25-06
Date

Subscribed and Sworn to before me this 25th day of July, 2006.



Theresa A. Shepard
Printed Name Theresa A. Shepard
Notary Public for the State of Nebraska
Residing at Omaha, NE
My commission expires March 30, 2008

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

Jennifer Massman
Jennifer Massman, Staff Attorney

8-3-2006
Date

1 FINAL ORDER

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 33-
3 1-101, *et seq.*, and upon review of the forgoing Consent Agreement and good cause appearing
4 therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between the Insurance
6 Department and Preferred Professional Insurance Company is hereby adopted as if set forth fully
7 herein.

8 DATED this 4th day of August, 2006.

9 JOHN MORRISON
10 State Auditor and Commissioner of Insurance

11 
12 By: Alicia Pichette
13 Deputy Insurance Commissioner
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of AUGUST, 2006, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondent and Department, by mail, postage prepaid, or by hand-delivery at the following address:

Jeanette M. Smith. Esq.
Kutak Rock
1650 Farnam Street
Omaha, NE 68102
(Legal Counsel for Respondent)

Jennifer Massman
Staff Attorney
Insurance Department


